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8

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

11 PETER JAY GERBER and MIRIAM  
GOLDBERG,

12 Plaintiffs,

13 v.

14 BAYER CORPORATION AND  
15 BAYER HEALTHCARE  
PHARMACEUTICALS, INC.; BMC  
16 DIAGNOSTICS, INC.; CALIFORNIA  
PACIFIC MEDICAL CENTER;  
17 GENERAL ELECTRIC COMPANY;  
GE HEALTHCARE, INC.; GE  
18 HEALTHCARE BIO-SCIENCES  
CORP.; McKESSON  
19 CORPORATION; MERRY X-RAY  
CHEMICAL CORP.; and DOES 1  
20 through 35

21 Defendants.  
22

CASE NO. CV-07-5918-JSW

**REQUEST FOR JUDICIAL NOTICE  
PURSUANT TO FEDERAL RULES OF  
EVIDENCE, RULE 201**

**[Jury Trial Demanded]**

(San Francisco County Superior Court Case No.  
CGC07468577)

[Filed Concurrently with Removing  
Defendants' Opposition to Plaintiffs' Motion  
for Remand]

23 **REQUEST FOR JUDICIAL NOTICE**

24 Defendants General Electric Company, GE Healthcare Inc. and GE Healthcare  
25 Bio-Sciences Corp. (hereinafter "the GE Defendants") respectfully request that this Court  
26 take judicial notice of the following adjudicative facts and attached exhibits pursuant to  
27 Federal Rules of Evidence, Rule 201(b):  
28

## ADJUDICATIVE FACTS

(1) Plaintiffs in Gadolinium-based contrast agent litigation have moved to have all related actions transferred to the Southern District of Ohio for coordinated or consolidated pretrial proceedings. (*Motion for Transfer*, attached hereto as Exhibit “A;” see also Deborah C. Prosser Declaration ¶ 2.)

(2) The instant action arises out of Plaintiffs’ claim that Peter Jay Gerber was exposed to Gadolinium-based contrast agents which caused him to contract a disease known as nephrogenic systemic fibrosis and/or nephrogenic fibrosing dermapathy (NSF/NSD), and thus, will be subject to transfer to any MDL established. (See *Complaint* ¶¶ 43 through 67, attached hereto as Exhibit “B.”)

(3) BMC Diagnostics, Inc. is a California corporation with no “professional corporation or P.C.” designation. (See *Complaint* ¶ 33, see also California Business Portal Corporation Search Results, attached hereto as Exhibit “C;” see also Prosser Decl. ¶ 6.)

## LAW AND ARGUMENT

The facts above are adjudicative in nature and are properly the subject of a request for judicial notice under Rule 201. Rule 201 of the Federal Rules of Civil Procedure governs requests for judicial notice of adjudicative facts. (See F.R.C.P. Rule 201(a).) A judicially noticed adjudicative fact must be one “not subject to reasonable dispute” because it is either generally known or capable of accurate and ready determination. (See F.R.C.P. Rule 201 (b).)

Generally, adjudicative facts are established through the introduction of evidence, ordinarily consisting of the testimony of witnesses. If particular facts are outside the area of reasonable controversy, this process is dispensed with as unnecessary. (F.R.C.P. Rule 201, Note to Subdivision (a).) Facts “which relate to the parties” are adjudicative facts. “When a court or an agency finds facts concerning the immediate parties – who did what, where, when, how, and with what motive or intent – the court or agency is performing an adjudicative function, and the facts are conveniently called adjudicative facts.” (F.R.C.P.

1 Rule 201, Note to Subdivision (a) (citing Davis, K., *Problems of Evidence in the*  
2 *Administrative Process*, 55 Harv.L.Rev. 364, 404-407 (1942).)

3 In addition, the sources identified above are proper sources for the taking of  
4 judicial notice.

5 (1) *Court Records are Proper Source for Judicial Notice*

6 This Court has authority to take judicial notice of another court's records, including  
7 Exhibits "A" and "B" above. (See *Genetech, Inc. v. U.S. Intl. Trade Commission*, 122  
8 F.3d 1409 (1977) (district court's protective orders judicially noticed); see also *Colonial*  
9 *Penn Ins. Co. v. Coil*, 887 F.2d 1236, 139 (4<sup>th</sup> Cir. 1989) ("the most frequent use of  
10 judicial notice of ascertainable facts is in noticing the content of court records" – quoting  
11 21 Charles A. Wright & Keneth W. Graham, Jr., *Federal Practice & Procedure* § 5106 at  
12 505 (1977).)

13 (2) *On-Line Secretary of State Records are Proper Source for Judicial Notice*

14 As evidenced by Plaintiffs' Complaint, BMC Diagnostics, Inc.'s status as a  
15 corporation is not subject to dispute, and this Court may take judicial notice of the  
16 Secretary of State's on-line records regarding BMC's corporate status. (See *Inherent.com*  
17 *v. Martindale-Hubbell*, 420 F.Supp.1093, 1094 (court referred to on-line records of  
18 California Secretary of State in determining whether judicial notice was proper); see also  
19 *Kelly v. Qualitest Pharmaceuticals, Inc.*, 2006 WL 2536627 (E.D. Cal.)<sup>1</sup> (judicial notice  
20 of corporate status taken from Alabama Secretary of State's website).)

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28 <sup>1</sup> See Exhibit "D" attached hereto.

1 Because both the underlying facts and the attached sources are properly the subject  
2 of a request pursuant to Rule 201, this Court should exercise its discretion and judicially  
3 notice the above adjudicative facts and attached exhibits.

4  
5 Dated: December 20, 2007

KUTAK ROCK LLP

6  
7 By: 

8 Deborah C. Prosser  
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11 GE HEALTHCARE INC. and GE  
12 HEALTHCARE BIO-SCIENCES  
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